

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Case No. 20-cr-00168 (WMW/ECW)

Plaintiff,

v.

ORDER

Montez Terriel Lee, Jr.,

Defendant.

This case is before the Court on Montez Terriel Lee, Jr.’s Motion for Discovery of Expert Under Rule 16(a)(1)(G) (Dkt. 17); Montez Terriel Lee, Jr.’s Motion for Early Disclosure of Jencks Act Materials (Dkt. 18); Montez Terriel Lee, Jr.’s Motion for Discovery (Dkt. 20); Montez Terriel Lee, Jr.’s Motion to Produce 404(b) Evidence (Dkt. 21); Montez Terriel Lee, Jr.’s Motion to Preserve Rough Notes (Dkt. 22); Montez Terriel Lee, Jr.’s *Giglio* Motion (Dkt. 23); Montez Terriel Lee, Jr.’s Motion for Attorney-Conducted Voir Dire (Dkt. 24); Montez Terriel Lee, Jr.’s Motion for a Bill of Particulars (Dkt. 25); and Montez Terriel Lee, Jr.’s Motion for Reconsideration of Detention (Dkt. 31).

The Court held a hearing on the motions on November 20, 2020 by Zoom for Government. Thomas Calhoun-Lopez, Assistant U.S. Attorney, appeared on behalf of Plaintiff United States of America (“the Government”) and Andrew Garvis appeared on behalf of Defendant Montez Terriel Lee, Jr., who consented to holding the hearing by Zoom for Government and was present at the hearing via Zoom for Government.

Based on the files, records, and proceedings herein, **IT IS ORDERED THAT:**

1. Defendant Montez Terriel Lee, Jr's Motion for Discovery of Expert Under Rule 16(a)(1)(G) (Dkt. 17) is **GRANTED**. The parties shall disclose initial Rule 16(a)(1)(G) evidence 30 days before trial and rebuttal evidence shall be disclosed 14 days before trial.

2. Defendant Montez Terriel Lee, Jr's Motion for Early Disclosure of Jencks Act Materials (Dkt. 18) is **DENIED**. The Jencks Act plainly provides that "no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case." 18 U.S.C. § 3500. The Eighth Circuit has repeatedly held that the Government cannot not be required to make pretrial disclosure of Jencks Act material. *See, e.g., United States v. White*, 750 F.2d 726, 729 (8th Cir. 1984). Nothing in this Order, however, precludes the Government from voluntarily disclosing any Jencks Act material early as it has represented that it already has produced such evidence and will continue to do so no later than three business days prior to trial. (Dkt. 28 at 2.)

3. Defendant Montez Terriel Lee, Jr's Motion to Suppress Evidence Obtained as a Result of Search and Seizure (Dkt. 19) is **WITHDRAWN** based on the representations of Defendant's counsel at the hearing

4. Defendant Montez Terriel Lee, Jr's Motion for Discovery (Dkt. 20) is **GRANTED IN PART** and **DENIED IN PART**. The Government represents that it has

complied with its obligations under Rule 16 and will continue to do so. The Government shall comply with its discovery obligations under Rule 16.

5. Defendant Montez Terriel Lee, Jr's Motion to Produce 404(b) Evidence (Dkt. 21) is **GRANTED IN PART**. No later than two (2) weeks before the commencement of trial, the Government shall disclose Rule 404(b) evidence of crimes or acts which are not inextricably intertwined with the charged crime. *See Buchanan v. United States*, 714 F.3d 1046, 1048 (8th Cir. 2013). Nothing in this Order requires the Government to produce evidence regarding acts which are intrinsic to the charged offense.

6. Defendant Montez Terriel Lee, Jr's Motion to Preserve Rough Notes (Dkt. 22) is **GRANTED** to the extent that the Government in its written submissions has represented that it does not object to requiring law enforcement officials involved in the investigation of this case to retain and preserve their rough notes. Nothing in this Order should be interpreted as requiring production of any rough notes at this time.

7. Defendant Montez Terriel Lee, Jr's *Giglio* Motion (Dkt. 23) is **DENIED IN PART** as moot based on the Government's representation that it will comply with its duty to disclose materials covered by *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny. The Motion is **GRANTED IN PART** insofar as within 10 days of the date of this Order the Government must disclose all *Brady/Giglio* information in its possession or of which it has become aware as of the date of this Order and must promptly supplement its disclosure upon receipt of any additional *Brady/Giglio* information not previously disclosed.

8. Defendant Montez Terriel Lee, Jr's Motion for Attorney-Conducted Voir Dire (Dkt. 24) is **DENIED** without prejudice as premature. Defendant may raise this motion before United States District Judge Wilhelmina M. Wright as part of trial proceedings. *See United States v. Jaunich*, No. 07-328PAMJSM, 2008 WL 114897, at *1 (D. Minn. Jan. 10, 2008).

9. Defendant Montez Terriel Lee, Jr's Motion for a Bill of Particulars (Dkt. 25) and Motion for Reconsideration of Detention (Dkt. 31) are **TAKEN UNDER ADVISEMENT**. These Motions will be addressed by separate Order to issue.

10. Defendant Montez Terriel Lee, Jr's Motion to Dismiss the Indictment (Dkt. 26) is **TAKEN UNDER ADVISEMENT**. The motion will be addressed in a separate Report and Recommendation to issue.

DATED: November 20, 2020

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge